



TENNESSEE

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MEMORANDUM

To: Memphis City Council

From: Josh Whitehead, Assistant City Attorney

Date: July 20, 2010

Subject: **Amendments made to the UDC (ZTA 09-001 CC) by the Shelby County Board of Commissioners**

The purpose of this memorandum is to summarize the four amendments made by the Shelby County Board of Commissioners during their first two readings of the Unified Development Code (UDC). These amendments were not reflected in the paper copy of the UDC you received prior to Council's First Reading of the Zoning Text Amendment on June 22, 2010. As the UDC is a joint ordinance that must be approved by both the Memphis City Council and Shelby County Board of Commissioners, these amendments are being offered for your consideration on Third and Final Reading on July 20, 2010. The document is expected to be subsequently approved on Third and Final Reading by the Shelby County Board of Commissioners on July 26, 2010. Throughout this memorandum, proposed language is indicated in **bold, double underling**; deletions are indicated in ~~strikethrough~~.

Amendment No. 1: The Board of Commissioners amended the effective date for the UDC in three ways 1) to insert the date of January 1, 2011 as the effective date, 2) to allow the Memphis City Schools and Shelby County Schools additional time to adhere to the provisions of the UDC since Qualified School Construction Bonds (QSCB) funds have already been allocated by the US Department of Education for new schools and site plans have been drawn for these locations and 3) to permit a property owner the choice to adhere to the provisions of the UDC between the date the UDC is approved on and January 1, 2011.

Chapter 1.3, Effective Date

*This development code was adopted on [insert date here] and **becomes** ~~became~~ effective on **January 1, 2011, except as it applies to properties owned by Shelby County Schools and Memphis City Schools, in which case this development code becomes effective on August 1, 2011. Between the adoption date and the effective date, a property owner may choose to adhere to either this development code or the previously adopted Memphis and Shelby County Zoning Code and Subdivision Regulations.***

Amendment No. 2: The Board of Commissioners amended the permissible locations for the construction of new schools. Under the current Zoning Code, schools may be located on any street (arterial, collector or local) since the Zoning Code has no effect on either the Shelby County Schools or Memphis City Schools. Under this amendment, all high schools must be located on either connectors or arterials and all elementary,

middle, and junior high schools must be located on either connectors, arterials or a local street provided the local street is at least 40 feet wide adjacent to the school. The locations of arterials, connectors and local streets are indicated in the Memphis Metropolitan Organization's Long Range Transportation Plan.

2.6.2 C School, Public or Private, Seminary

8. All elementary, middle and junior high schools shall be located on a connector or arterial, or on a local street if the drivable width of the local street adjacent to the school site is at least 40 feet wide.
9. All high schools shall be located on an arterial or connector.

In addition to the above-referenced amendment, the following definition was added, since the UDC utilizes the term "connector" and the Long Range Transportation Plan utilizes the term "collector:"

12.3.1 General Definitions

CONNECTOR: As it pertains to specified uses permitted along connector streets, a connector shall be defined as any street identified as either a collector or connector in the Long Range Transportation Plan.

Amendment No. 3: The Board of Commissioners amended the University District Overlay and the Uptown Special Purpose District to allow schools in residential districts by right rather than by issuance of a special use permit, since schools are permitted by right in residential districts throughout the balance of the jurisdiction of the UDC.

The proposed amendment added solid boxes to Section 8.2.11 for "schools, public or private (K-12)" to indicate these uses are permitted by right in the R6, RU-1 and RU-3 zoning districts rather than by special use permit. This amendment also replaced the "S" that indicates a special use permit in the Medium-Density Residential Zoning District on the table in Section 7.2.11 with an "X," indicating this as a use by right. This squared these tables in the University District Overlay and the Uptown Special Purpose District with the Use Table in Section 2.5.2, which applies to all properties not included in Overlay or Special Purpose Districts.

Amendment No. 4: Finally, the Board of Commissioners approved an amendment to the section of the UDC concerning Certificates of Occupancy. The proposed amendment clarifies the current process of issuing Certificates of Occupancy.

Sub-Section 9.19.3A:

It shall be unlawful for an owner or any other person to use or permit the use of any building or premises or part thereof, hereafter created, changed, converted, or enlarged, wholly or partly, until a certificate of occupancy has been issued by the Building Official in that owner or person's name; provided however, such certificate of occupancy shall not be required for a person to use an existing building or premises, or part thereof, if:

- 1. The proposed use does not require a change in the physical layout of the interior or exterior of the building or structure or its support systems which would require the issuance of a permit from the Building Official under the technical codes; and**

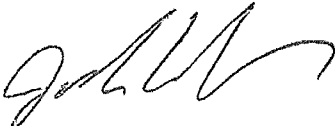
2. The proposed use is:

- (a) a permitted use under Article 2.5 of this development code for the zoning district in which the building is located, and
- (b) the same use and occupancy classification under Chapter 3 of the building code as the most recent such building code use and occupancy classification of the premises.

9.17.2 C. A sign permit shall not require a certificate of occupancy.

Please feel free to contact me if you have any questions on any of these matters, or on the UDC in general.

Sincerely,



Josh Whitehead

576-6602

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Joint Ordinance No.: _____

A JOINT ORDINANCE REPEALING THE MEMPHIS AND SHELBY COUNTY ZONING REGULATIONS ADOPTED BY THE SHELBY COUNTY BOARD OF COMMISSIONERS ON OCTOBER 6, 1981 AND BY THE MEMPHIS CITY COUNCIL ON OCTOBER 7, 1981, BEING JOINT ORDINANCE AND RESOLUTION NO. 3064, AS AMENDED; REPEALING THE MEMPHIS AND SHELBY COUNTY SUBDIVISION REGULATIONS ADOPTED BY THE SHELBY COUNTY BOARD OF COMMISSIONERS AND THE MEMPHIS CITY COUNCIL ON DECEMBER 19, 1983, BEING JOINT ORDINANCE AND RESOLUTION NO. 3352, AS AMENDED; AND ADOPTING THE MEMPHIS AND SHELBY COUNTY UNIFIED DEVELOPMENT CODE TO ESTABLISH JOINT ZONING AND SUBDIVISION REGULATIONS, TO PROVIDE FOR A BOARD OF ADJUSTMENT AND A LAND USE CONTROL BOARD, AND TO PROVIDE FOR THE ENFORCEMENT AND PENALTIES FOR VIOLATION OF THE REGULATIONS.

WHEREAS, By the provisions of chapter 165 of the Private Acts of the General Assembly of the State of Tennessee for the year 1921, authority was conferred upon the legislative body of the City of Memphis, Tennessee, to establish districts or zones within the corporate territory of the City of Memphis and to establish zoning regulations pertaining thereto, and to amend said zones or districts and zoning regulations pertaining thereto from time to time; and

WHEREAS, By the provisions of chapter 613 of the Private Acts of the General Assembly of the State of Tennessee for the year 1931, the legislative bodies of the City of Memphis and the County of Shelby were given authority to establish districts or zones within the territory in Shelby County, Tennessee, outside of, but within five miles of the corporate limits of the City of Memphis, Tennessee, and to establish zoning regulations pertaining thereto, and to amend said zones or districts and zoning regulations pertaining thereto from time to time; and

WHEREAS, By the provisions of chapter 625 of the Private Acts of the General Assembly of the State of Tennessee for the year 1935, authority was conferred upon the legislative body of the County of Shelby, to establish districts or zones within the unincorporated territory of Shelby County and outside the five-mile zone of the corporate limits of the City of Memphis, Tennessee, and to amend said zones or districts and zoning regulations pertaining thereto from time to time; and

WHEREAS, by the provisions of chapter 470 of the Private Acts of 1967, the General Assembly of the State of Tennessee conferred upon the legislative body of Shelby County the authority to regulate the subdivision or resubdivision of land into two or more parts; and

WHEREAS, by the provisions of section 2 of chapter 470 of the Private Acts of 1967, the General Assembly of the State of Tennessee conferred upon the legislative bodies of the City of Memphis and the County of Shelby the authority to regulate the subdivision and resubdivision of land within three miles of the corporate limits of the City of Memphis into two or more parts; and

WHEREAS, by provisions of T.C.A. tit. 54, ch. 10 [§ 54-10-101 et seq.], the General Assembly of the State of Tennessee conferred on the legislative body of Shelby County the authority to open, close or change public roads within the areas subject to its jurisdiction; and

WHEREAS, a comprehensive review of the existing zoning and subdivision regulations was initiated by the Memphis and Shelby County Division of Planning and Development; and

WHEREAS, in cooperation with the city and county divisions and other governmental agencies, the zoning and subdivision regulations were found to be outdated and not in conformance with many current city and county plans, policies, and requirements; and

WHEREAS, the Memphis and Shelby County Division of Planning and Development engaged nationally known and recognized consultants to assist in the creation of the Memphis and Shelby County Unified Development Code (“UDC”); and

WHEREAS, the vision of the UDC is to create healthy neighborhoods, a higher quality of life, a stronger sense of community, and smarter use of tax revenues, that will promote a resilient and sustainable City of Memphis and Shelby County; and

WHEREAS, the UDC advances urban, pedestrian friendly, walkable character in developments in a contextually sensitive manner; and

WHEREAS, the UDC establishes more definitive filing and processing procedures; and

WHEREAS, form standards and criteria have been integrated into the UDC requiring and encouraging more sensitivity to the physical constraints of land and environmental characteristics; and

WHEREAS, the UDC requires a developer or subdivider to provide improvements that directly benefit the development, and that the city and/or county would provide those improvements and facilities that benefit the community; and these regulations meet that objective; and

WHEREAS, the reduction in certain street widths will reduce the cost of improvements and maintenance, and will not be detrimental to traffic safety or adequate vehicular circulation; and

WHEREAS, required notification of surrounding property owners will provide more citizen input into the development and subdivision of adjacent lands; and

WHEREAS, these procedures provide for public notice and public hearings to adequately inform and hear testimony from affected property owners; and

WHEREAS, The Memphis City Council and Board of County Commissioners have had the opportunity to review several reports concerning the adverse secondary effects caused by adult businesses, including *Regulating Adult Oriented Establishments*, December 11, 2006, Report of Duncan Associates for the Memphis Shelby Crime Commission, Office of Planning and Development; *Geospatial Analysis of Crime Incidents and Arrests Around Sexually Oriented Businesses* – May 2004 by the University of Memphis Center for Community Criminology and Research; *Best Practice Number 15: Examining the Impact of Sexually Oriented Businesses on Crime in Memphis, TN*, a report of the Memphis Shelby Crime Commission; *Addendum to Best Practice 15*, dated sometime in 2007; a letter summary of illegal activity dated March 12, 2007, from the Hon. William L. Gibbons, District Attorney General; *Memphis Alcohol Commission and Adult Entertainment Report* of April 2007 by the Memphis and Shelby County Division of Planning and Development; a report regarding the adverse health effects of activity commonly occurring in adult bookstores; and the state legislature’s findings in enacting 1998 *Tennessee Public Acts*, chapter 1090 and amendments, and in particular in the most recent amendments to that law at 2006 *Tennessee Public Acts*, chapter 943, wherein the legislature found the law to be a reasonable time, place, and manner regulation to attempt to address some recognized deleterious secondary effects commonly associated with adult-oriented establishments, including but not limited to an increase in crime, the spread of sexually-transmitted diseases,

the downgrading of property values, and other public health, safety, and welfare issues; and find that zoning requirements particular to adult businesses are appropriate as set out further in the attachment; and

WHEREAS, The Memphis City Council and Board of County Commissioners find that each of the foregoing negative secondary effects constitutes a harm that the City and County have a substantial government interest in preventing and/or abating. This substantial government interest in preventing adverse secondary effects, which is the rationale for regulating adult-oriented businesses, exists independent of any comparative analysis between adult-oriented and non-adult-oriented businesses. Additionally, the interest in regulating adult-oriented businesses through the UDC extends to preventing future secondary effects of adult-oriented businesses currently operating in Memphis and Shelby County as well as future adult-oriented businesses that may locate in Memphis and Shelby County. The Memphis City Council and Board of County Commissioners find that the reports and documentation referenced herein are reasonably believed to be relevant to such secondary effects; and

WHEREAS, the UDC would change and supersede all the regulations and districts adopted in the above captioned ordinances, ordinances and resolutions, or resolutions, and has been proposed, and submitted to the Memphis and Shelby County Land Use Control Board for recommendations and report; and

WHEREAS, The Memphis and Shelby County Land Use Control Board has recommended changes in the zoning districts and regulations heretofore established by the said aforementioned ordinances, ordinances and resolutions, or resolutions; and

WHEREAS, A public hearing has been held on June 10, 2010, in the city council chambers at Memphis City Hall in Memphis, Shelby County, Tennessee, at which time all owners of property were given ample opportunity, after notice by advertising in the *Daily News*, a daily newspapers of general circulation, published in Memphis, Shelby County, Tennessee, to file their protest or remonstrances, if any they had, in accordance with the requirements of the aforementioned Private Acts; and

WHEREAS, The legislative bodies have considered the recommendation of the Memphis and Shelby County Land Use Control Board, and in so doing have had the aforementioned open and public hearing at which the proponents and opponents, if any, have been heard, and the members of the Memphis City Council and the Board of Commissioners of Shelby County, Tennessee, have considered and deliberated upon the advisability and necessity of accepting and executing the recommendation of the Memphis and Shelby County Land Use Control Board for the adoption of the new zoning and subdivision regulations and districts as set forth hereinafter as a unified zoning regulation.

NOW, THEREFORE, BE IT ORDAINED, By the City Council that the City of Memphis and by the Board of Commissioners of Shelby County, Tennessee that Joint Ordinance No. 3064 and Joint Ordinance No. 3352, and as they have been amended, are hereby repealed and replaced with the Memphis and Shelby County Unified Development Code as it appears in attachment A to this Ordinance.

BE IT FURTHER ORDAINED, That the various sections of this Ordinance are severable, and that any portion declared unlawful shall not affect the remaining portions.

BE IT FURTHER ORDAINED, That this Ordinance shall become effective _____, 2010.